

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED

DOCKET NO. 2008-0303

For Approval of the Advanced Metering
Infrastructure (AMI) Project and Request to
Commit Capital Funds, to Defer and Amortize
Software Development Costs, to Begin Installation
of Meters and Implement Time-of-Use Rates, for
Approval of Accounting and Ratemaking
Treatment, and Other Matters.

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PUBLIC UTILITIES
COMMISSION

FILED

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S
MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE OF
HAWAII RENEWABLE ENERGY ALLIANCE**

AND

CERTIFICATE OF SERVICE

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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")¹
respectfully submit this Memorandum in Opposition to the Motion to Intervene of Hawaii
Renewable Energy Alliance ("HREA"), filed January 30, 2009² ("Motion").

¹ HECO, HELCO and MECO are collectively referred to as the "HECO Companies" or "Companies".

² Hawaii Administrative Rules ("HAR") § 6-61-21 provides: "Service of Process. . . (c) Documents shall be served personally or, unless otherwise provided by law, by first class mail. . . ." With respect to the manner in which the Motion was served, the Certificate of Service to the Motion, dated January 30, 2009 ("COS") states: "I hereby certify that I have this day served the foregoing Motion to Intervene upon the following parties by causing a copy(ies) hereof to be hand-delivered or mailed, postage prepaid and properly addressed to each such party, or electronically transmitted[.]" Instead of indicating whether the HECO Companies were served with the Motion via hand-delivery or by U.S. mail, the COS only indicates that copies of the Motion were "Electronically Transmitted" to HECO, HELCO and MECO. However, service by electronic transmission is not an identified method of service under HAR § 6-61-21.

HAR § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion" HAR § 6-61-22 states: ". . . When the prescribed time is less than

The HECO Companies recognize that pursuant to the agreement reached among the parties with respect to the Renewable Energy Infrastructure ("REI") Program ("REI Program") proposed in the REIP docket, Docket No. 2007-0416, the appropriate docket for evaluating the merits of a specific REI project ("REI Project") (such as the Advanced Metering Infrastructure ("AMI") Project) is the proceeding in which an application is filed with respect to that particular REI Project. However, a party to the agreement reached in the REIP docket who is seeking intervention as a full party in a specific REI Project docket is nonetheless required to meet the standards for intervention set forth in HAR § 6-61-55.

In the instant docket, HREA's Motion to Intervene should be denied, as: (1) HREA has not demonstrated that its interest will not be represented by the existing parties, in particular, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "Consumer Advocate"); and (2) HREA has not demonstrated that it can assist in the development of a sound record with respect to the AMI Project.

HREA has not requested participant status. If HREA is allowed to participate in this docket, however, then HREA should be designated a participant, and not an intervenor party. In addition, HREA's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, HREA's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and HREA should be required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (the "Commission's Rules of Practice and Procedure").

seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation" Given that the HECO Companies were never properly served with the Motion, there is technically no deadline for the filing of this memorandum. However, because five days from January 30, 2009, excluding Saturdays, Sundays and holidays, is Friday, February 6, 2009, this memorandum would nonetheless be timely filed even if the Motion had been hand-delivered on January 30, 2009 (as opposed to having been "Electronically Transmitted" on the same day).

I. HREA'S MOTION TO INTERVENE SHOULD BE DENIED.

The HECO Companies recognize that pursuant to the agreement reached among the parties with respect to the REI Program proposed in the REIP docket, the appropriate docket for evaluating the merits of a specific REI Project (such as the AMI Project) is the proceeding in which an application is filed with respect to that particular REI Project.³ However, a party to the agreement reached in the REIP docket who is seeking intervention as a full party in a specific REI Project docket is nonetheless required to meet the Commission's standard for intervention. As further discussed below, HREA has not justified its intervention as a full party in this docket, and thus the relief requested in its Motion should be denied.

A. STANDARD FOR INTERVENTION.

Motions to intervene are governed by the Commission's Rules of Practice and Procedure, which pertain to intervention as a party as well as participation without intervention. HREA has labeled its Motion as a "Motion to Intervene" filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), "A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant." Because HAR §§ 6-61-55(a) and (b) require a movant to "adequately state specific facts or reasons," statements or allegations that are "conclusory" and "merely recite the various factors set forth in HAR § 6-61-55(b)" are inadequate for intervention as a party. See Re Hawaiian Electric Company, Inc., Docket No. 00-0322, Order No. 18035

³ AMI has been identified in the Companies' renewable portfolio standards ("RPS") and REIP dockets (see Docket Nos. 2007-0008 and 2007-0416, respectively) as a REI Project under the REI Program. In the REIP docket, the HECO Companies, Consumer Advocate, HREA and Life of the Land have agreed, among other things that: (1) it is appropriate that the Commission approve the HECO Companies' proposed REI Program and related REIP Surcharge (see HECO Companies' letter to the Commission, filed November 28, 2008 in Docket No. 2007-0416); and (2) that each proposed REI Project should be evaluated on a case-by-case basis (see HECO Companies' Reply Position Statement, filed September 17, 2008 in Docket No. 2007-0416). As a result of the agreement reached in the REIP docket, the instant docket (i.e., Docket No. 2008-0303) is the appropriate proceeding for specifically evaluating the merits of the AMI Project.

(September 20, 2000) ("Order 18035") at 3.⁴

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

Moreover, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

B. HREA HAS NOT DEMONSTRATED THAT THE CONSUMER ADVOCATE WILL NOT ADEQUATELY REPRESENT ITS INTERESTS WITH RESPECT TO AML.

HAR § 6-61-55(b)(5) requires that motions to intervene make reference to "[t]he extent to which the applicant's interest will not be represented by existing parties[.]" With respect to

⁴ See also Order Denying Motions To Intervene [among other things], filed October 31, 2008 in HECO's 2009 test year rate case, Docket No. 2008-0083 ("HECO 09 RC Order") at 14:

Even if the commission were to consider the [Motion] on its merits, the commission would deny the motion, as the support provided by Wal-Mart is conclusory and brief (i.e., less than two pages of substantive support is provided in the [Motion]).

this requirement, HREA simply asserts: "None. For example, the utilities and the Consumer Advocate cannot adequately represent the interests of HREA and its individual members."

Motion at 4. HREA's contention in this regard is conclusory and unsupported, and as a result, does not meet the Commission's requirements for intervention as a party.

Contrary to HREA's contention, the Consumer Advocate (an ex officio party to this docket) is statutorily required to "represent, protect, and advance the interest of all consumers, including small businesses, of utility services." HRS § 269-51 (emphasis added). Thus, the Consumer Advocate is required to represent the interests of all consumers (including HREA's members) in its position on the Companies' AMI application. Given the Consumer Advocate's resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility project application proceedings, this is a task to which the Consumer Advocate is well-suited.

In addition, HREA's allegation that the Consumer Advocate will not adequately represent HREA's interests is not supported by any specific facts or reasons, and is thus conclusory. For example, HREA does not specifically explain how the Consumer Advocate, in representing all consumers, would not also be representing HREA's membership. As a result, HREA's allegation does not meet the standards set forth in Order 18035 or the HECO 09 RC Order,⁵ discussed above.

Moreover, the other portions of HREA's brief "Argument" (which is less than two pages

⁵ In Docket No. 2008-0083, the Hawaii Commercial Energy Customer Group's ("Commercial Group") September 29, 2008 motion to intervene contained a similarly conclusory (although more detailed) allegation that –

in some cases, the Consumer Advocate, in considering the interests of HECO's ratepayers, may not necessarily be able to advance the interests of individual large customers, such as the members of the Commercial Group. This is the case especially with regard to cost allocation and rate design, which are issues in this case that are extremely important to the Commercial Group.

Id. at 5. In denying the Commercial Group's motion, the Commission found, among other things, that "there is no indication in the record that the Consumer Advocate will not adequately represent the interests of the Commercial Group's members." HECO 09 RC Order at 15.

long)⁶ are likewise unsupportive of HREA's contention that the Consumer Advocate would not adequately represent HREA's interests in this docket. For example, although HREA claims that its members are concerned with the "market impacts" and "potential market outcomes" of the AMI Project and related time-of-use rates,⁷ the Motion does not specifically identify: (1) who HREA's members are; (2) what the "market impacts" of AMI or time-of-use rates may be; or (3) any "potential market outcomes" that might arise from this docket.⁸ In light of the conclusory nature of HREA's allegations, and the absence of specific facts or reasons concerning: (1) the nature and extent of HREA's alleged interests in this docket;⁹ or (2) the effect of the pending order on those alleged interests,¹⁰ there is no indication in the record that the Consumer Advocate will not adequately represent the interests of the HREA's members.

C. HREA HAS NOT DEMONSTRATED THAT IT CAN ASSIST IN THE DEVELOPMENT OF A SOUND RECORD WITH RESPECT TO THE COMPANIES' AMI PROJECT.

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation can assist in the development of a sound record[.]" With respect to this requirement, HREA claims that it "will provide the resources, including professional expertise and time, necessary for effective representation, and to assist in the development of a sound evidentiary record." Motion at 5. HREA's claim is unpersuasive.

This docket concerns the implementation and roll-out of the HECO Companies' AMI

⁶ The remainder of the Motion is composed of a one-and-a-half page "Background" section that generally describes HREA's participation in other Commission dockets, as well as "a number of issues related to the [HCEI] Agreement and the instant docket" which, according to HREA, "need to be discussed further". However, the "Background" section does not provide any indication as to why the Consumer Advocate would not be able to adequately represent HREA's alleged interest in these proceedings.

⁷ With respect to time-of-use rates, the Motion does not indicate that HREA possesses any specific experience, knowledge or expertise with respect to rate design issues. As a result, it is unclear how HREA would assist in the development of a sound record with respect to time-of-use rates.

⁸ See Motion at 4, para. 2.

⁹ See Motion at 4, para. 2.

¹⁰ See Motion at 4, para. 3, which states "See #2 above."

system. Thus, not unlike many AMI roll-outs in other states, the relief being requested by the HECO Companies in this docket is complex. In particular, the Companies' AMI application entails, among other things: (1) the commitment of approximately \$65 million in capital funds across three utilities; (2) the deferral of approximately \$13.5 million of software development costs for a meter data management system ("MDMS") centrally located at HECO with accrual of allowance for funds used during construction ("AFUDC") during the deferral period; (3) amortization of the MDMS deferred costs over a 12-year period, and inclusion of unamortized deferred costs in rate base; (4) accelerated recovery of the costs of the Companies' existing meters over different periods for each of the respective HECO Companies; (5) accelerated cost recovery of the Companies' new, AMI meters over a seven-year period; (6) first-come first-served AMI meter installation for customers who request them, with interim implementation of time-of-use rates for those customers; (7) various proposals for time-of-use rate schedules for each of the HECO Companies, including residential, small commercial, commercial and large power schedules; (8) recovery of incremental project costs through a surcharge mechanism; (9) approval of the Companies' agreement with their AMI vendor, Sensus Metering Systems ("Sensus"); and (10) recovery of lease expenses incurred in connection with a Sensus-owned AMI network. See Application at 85-88.

Although the foregoing issues will need to be addressed by the parties to this docket, HREA's Motion provides few (if any) indications as to what HREA would specifically add to the record regarding these issues. For example, although time-of-use rates appear to be a major focus of HREA's alleged interest in this docket,¹¹ the Motion does not indicate what (if any) specific expertise, knowledge or experience HREA might bring to the table with respect to time-

¹¹ See Motion at 3, 4.

of-use rates.

Instead, HREA asserts that “discussions” in various renewable energy dockets in which HREA has participated (i.e., “DSM, RPS, REIP, HECO-DG Tariffs and Feed-In Tariffs”) touched on the merits of time-of-use rates and that HREA “believes there are a number of issues related to the [HCEI] Agreement and the instant docket that need to be discussed further.”¹² However, HREA’s mere participation in dockets generally relating to renewable energy does not demonstrate that HREA could assist in the development of a sound record with respect to the implementation of the Companies’ AMI Project.

For example, rather than providing details as to the Companies’ proposed accounting and cost recovery mechanisms for the AMI Project, the interim time-of-use schedules for the project, or the Companies’ agreement with Sensus, the Motion poses general questions about the AMI Project’s time-of use rates, AMI software and overall cost impacts to ratepayers.¹³ However, the mere ability to pose general questions regarding a complex issue does not demonstrate that a movant possesses expertise, knowledge or experience such as would assist in the development of a sound record regarding that issue. In light of the absence of specific details as to how HREA would assist the Commission with respect to the HECO Companies’ request for relief, HREA’s Motion cannot be said to meet the requirements of HAR § 6-61-55(b)(6).

II. LIMITED PARTICIPATION WITHOUT INTERVENTION.

If the Commission finds that HREA should be allowed to participate in this docket, then it may be appropriate to allow HREA limited participation without intervention. The Commission in the past has denied intervenor status, but granted participation status pursuant to HAR § 6-61-56, and allowed the limited participation of persons seeking intervention on specific

¹² Motion at 3.

¹³ See Motion at 3.

issues when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, the Commission addressed participation without intervention in Re Hawaii Electric Light Co., Docket No. 05-0315, Order No. 22663 (August 1, 2006) ("Order No. 22663"). In that rate case, the Rocky Mountain Institute ("RMI") filed a motion to intervene, which was denied because RMI's stated experience and expertise were not reasonably pertinent to HELCO's request for a general rate increase. The Commission nevertheless granted RMI "limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the renewable energy and energy efficiency program for affordable homes." Order No. 22663 at 8 (emphasis added). In addition, the Commission stated that "unless the commission decides otherwise at a future date, RMI's participation is limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing." Id. at 8-9.

The Commission added:

RMI is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider RMI's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

Id. at 9.

In addition, in Re Hawaii Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) ("Order No. 17532"), the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company ("TGC") to intervene in HELCO's rate case. However, the Commission granted TGC participant status, limited to HELCO's proposed Standby Rider A.

The Commission stated:

the commission believes that TGC's limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;¹⁴ provided that TGC's participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission's review, it is concluded that TGC's efforts duplicate those of the Consumer Advocate's, the commission will reconsider TGC's further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted). The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989),¹⁵ and Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).¹⁶

¹⁴ In a footnote, the Commission added:

Unless ordered otherwise, TGC's participation will extend no further. We also make clear that as part of its on-going review of HELCO's request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC's participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

¹⁵ In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participant status would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

¹⁶ In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a MECO rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal

HREA has not requested participant status. If HREA is allowed to participate in this docket, however, then HREA should be designated a participant, and not an intervenor party. In addition, HREA's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, HREA's participation should not be permitted in any settlement agreement between the parties¹⁷ or to affect the schedule of proceedings or the statement of the issues, and HREA should be required to comply with the Commission's Rules of Practice and Procedure.

Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

¹⁷ See, e.g., the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084, page 2, wherein the Commission limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required:

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.

III. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that HREA's Motion to Intervene be denied.

HREA has not requested participant status. If HREA is allowed to participate in this docket, however, then HREA should be designated a participant, and not an intervenor party. In addition, HREA's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, HREA's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and HREA should be required to comply with the Commission's Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, February 6, 2009.



THOMAS W. WILLIAMS, JR.
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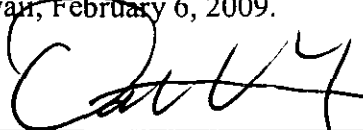
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE OF HAWAII RENEWABLE ENERGY ALLIANCE, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
2 copies		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	1 copy	Warren S. Bollmeier II, President Hawaii Renewable Energy Alliance 46-040 Konane Place 3816 Kaneohe, HI 96744

DATED: Honolulu, Hawaii, February 6, 2009.



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